

filed as Fraley Motion No. 6 in Interference No. 102,890. This motion was not considered during the interference because of a settlement agreement reached before a decision on the preliminary motions. The petition was also not considered by the Examiner in the parent application because the papers apparently were not previously forwarded from the interference division to Group 180. A copy of the papers filed, including Fraley Motion No. 6, a Petition to Correct Inventorship, a Substitute Declaration, and a Consent of the Assignee is enclosed herewith as **Tab 1**. It is respectfully requested that this Petition be granted.

2) Numerous documents have been cited in the European Patent Office in an opposition proceeding against the counter-part application to this application. Although the claims are not the same as in the present case, applicants are submitting in the attached Information Disclosure Statement a copy of each of these references (**Tab 2 and four bound volumes**) and the arguments submitted by the seven opponents (**Tab 3**), as well as patentee's observations (applicants reply to the oppositions)(**Tab 4**) and the Board's initial opinion based upon the oppositions (**Tab 5**). A final hearing will be held on December 14.

3) Finally, applicant proposed an amendment to claim 16, as well as the addition of claim 22 during the interference. These amendments again were not considered during the interference because of the early settlement. It is requested that these claims, as well as additional claims 23-28 be examined and allowed for reasons previously cited for allowance of this case.

Support for the amendments to claims 16 and the addition of claim 22 can be found in, for example, Example 2 of the Fraley application, which addresses a DNA construct, plasmid pMON155 as illustrated in Figure 5, including a CaMV 19S promoter DNA sequence isolated from CaMV protein-encoding DNA as a 455 base pair HindIII-MboI fragment (see specification page 12, lines 23-26). This construct further includes a kanamycin resistance protein-encoding DNA sequence (NPT II) inserted adjacent the 3' end of the 19S promoter DNA sequence to form the "CaMV(19S)-NPT II-NOS" chimeric gene (see specification page 12, lines 26-33) combined into pMON155. The construct was employed to impart kanamycin resistance to petunia cells (see specification page 13, lines 1-14) evidencing transcription of the NPT II gene under the regulatory control of the isolated 19S promoter. Example 3 of the Fraley application, in turn, addresses formation of DNA constructs, pMON183 and pMON184 illustrated in Figure 10. These constructs include a CaMV 35S promoter DNA sequence free of CaMV protein-encoding sequences as a 380 base pair EcoRI-BamHI fragment (see specification page 15, lines 19-21). This promoter DNA was ligated immediately upstream of the NPT II kanamycin resistance structural coding sequence forming the "CaMV (35S)-NPT II-NOS" chimeric gene which was combined in different orientations into plasmids pMON183 and pMON184 (see specification page 15, lines 27-30). The constructs were employed to transform petunia cells and impart resistance to kanamycin, evidencing transcription of the NPT II structural coding sequence under control of the isolated 35S promoter.

These examples further provide support for claim 24, as the *Agrobacterium* transformation in these examples and subsequent kanamycin resistance evidences

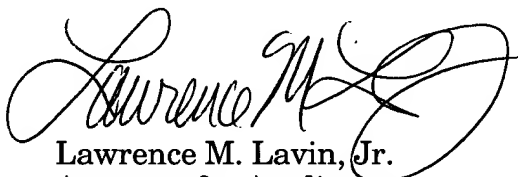
integration of the chimeric gene into the plant cell genome.

Support for claim 25 can be found at page 8, line 32-page 9, line 7 in U.S. Serial No. 625,637. This same language occurs in U.S. Patent Application Serial No. 458,568 at page 10, lines 7-17.

Claims 23 and 26-28 were added merely to complete applicants claim scope and are supported by claims previously allowed in the parent application.

In view of the above amendments and remarks, it is respectfully requested that a Notice of Allowance be issued for this application.

Respectfully submitted,



Lawrence M. Lavin, Jr.
Attorney for Applicants
Registration No. 30,768

Monsanto Company BB4F
700 Chesterfield Village Parkway
St. Louis, Missouri 63198
(314) 537-6670